

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 99-CV-2496 (GK)
)	
)	
PHILIP MORRIS, INCORPORATED, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**PHILIP MORRIS INCORPORATED'S RESPONSES TO
PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO ALL DEFENDANTS**

Defendant Philip Morris Incorporated ("Philip Morris") hereby responds to Plaintiff's First Requests for Admission to all Defendants ("Requests") as follows:

GENERAL OBJECTIONS

A. Philip Morris objects to the "Definitions" and "Instructions" to these Requests to the extent they attempt to impose obligations on Philip Morris other than those imposed or authorized by the Federal Rules of Civil Procedure and/or any applicable order of this Court.

B. Philip Morris objects to the phrase "environmental tobacco smoke" as defined in Paragraph 7 of the "Definitions" on the grounds that it is vague, ambiguous, and overly broad. Philip Morris further states that for purposes of responding to these Requests, it defines "environmental tobacco smoke" to mean a highly diluted, aged, dynamic, complex, and ever-changing mixture of sidestream smoke and exhaled mainstream smoke.

C. Philip Morris objects to the phrases "safer cigarette," "less hazardous cigarette," and "alternative cigarette" as used in these Requests, and as defined in Paragraph 8 of the "Definitions," on the grounds that they are vague and ambiguous and fail to describe the facts

Morris has placed on every package of cigarettes and on every advertisement, including those of its L&M, Chesterfield, and Lark cigarettes, a warning in the form set forth and required to be followed by federal law. During the time period since 1989, those rotating warnings were as follows:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking by Pregnant Women May result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

Except as expressly admitted, Philip Morris denies this Request.

REQUEST NO. 58: Admit that Liggett's placement of a warning on packages of cigarettes and cigarette advertising stating that "Smoking is Addictive" does not violate the Federal Cigarette Labeling and Advertising Act.

RESPONSE: Philip Morris objects to this Request on the ground that it improperly seeks an admission of a legal conclusion. Philip Morris further objects to this Request on the ground that it is not properly directed to Philip Morris. Philip Morris also objects to this Request on the ground that it seeks an admission regarding information pertaining to claims that are preempted by the Federal Cigarette Labeling and Advertising Act, codified as amended at 15 U.S.C. §§ 1331-41. See Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 121 S. Ct. 2404 (2001); Food and Drug Administration v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 120 S. Ct. 1291 (2000); Cipollone v. Liggett Group, Inc., 505 U.S. 504, 112 S. Ct. 2608 (1992).

REQUEST NO. 59: Admit that you are able to alter and/or control the amount of nicotine in your cigarettes as they are manufactured.

RESPONSE: Philip Morris objects to the terms "alter" and "control" as used in this Request on the grounds that they are vague and ambiguous. Philip Morris also objects to the phrase "amount of nicotine in your cigarettes" on the grounds that it is vague and ambiguous in that it is unclear whether Plaintiff is referring to the FTC nicotine yield or to the nicotine content of cigarette filler. Subject to and without waiving its specific and General Objections, Philip Morris denies that it independently "controls" the nicotine content of its cigarette filler or the FTC nicotine yields of cigarette smoke. Philip Morris states that nicotine yields generally follow "tar" yields. Philip Morris states, however, that it manufactured and sold a "denicotinized" product, which it test-marketed beginning in 1989, for which Philip Morris independently "controlled" (i.e., reduced) nicotine content in cigarette filler. However, this denicotinized product was found to be unacceptable to consumers.

Philip Morris further admits that it has reduced the "tar" and nicotine yields in its cigarettes. Over the past 40 years, consumers have expressed a preference for lower "tar" cigarettes. Philip Morris responded with a variety of techniques (such as filtration, ventilation, and use of expanded tobacco) for reducing the "tar" yields, as did other cigarette manufacturers. These "tar" reduction techniques also affect nicotine yields, such that a reduction in tar yields causes a roughly proportionate decrease in nicotine yield. In today's cigarettes, these techniques reduce the yield of "tar" and nicotine by as much as 95 percent, when compared with a standard, unfiltered cigarette made from tobacco and paper alone. Because consumers have varying "tar" reduction preferences, Philip Morris offers cigarettes with differing degrees of "tar" yields and, therefore, nicotine reduction, ranging from no reduction at all to cigarettes yielding 1 mg of "tar" and .01 mg of nicotine. Thus it can be said that Philip Morris "controls" (i.e., reduces) "tar" yields for the vast majority of its cigarettes and that nicotine yields follow "tar" yields, resulting

in yields far below those of a conventional unfiltered cigarette. Finally, Philip Morris strives to ensure the consistency of its cigarettes. Except as expressly admitted, Philip Morris denies this Request.

REQUEST NO. 60: Admit that you do alter and/or control the amount of nicotine in your cigarettes as they are manufactured.

RESPONSE: Subject to and without waiving its General Objections, Philip Morris refers to and incorporates herein its objections and response to Request No. 59.

REQUEST NO. 61: Admit that you are able to alter, affect and/or limit the amount of nicotine delivered to the smoker of your cigarettes.

RESPONSE: Philip Morris objects to the terms "alter," "affect," "limit," and "nicotine delivered" on the grounds that they are vague and ambiguous. Philip Morris further objects to this Request as argumentative to the extent Plaintiff intends to suggest that Philip Morris "alters" or controls nicotine independently of "tar." Subject to and without waiving its specific and General Objections, Philip Morris refers to and incorporates herein its response to Request No. 59.

REQUEST NO. 62: Admit that you are able to produce a cigarette without nicotine.

RESPONSE: Subject to and without waiving its General Objections, Philip Morris admits that it is technologically feasible to remove most, but not all, nicotine from raw tobacco through an alkaloid reducing process that is separate from the cigarette manufacturing process. However, this process affects other components of tobacco, as well as nicotine, and results in cigarettes that do not have a flavor that is generally acceptable to consumers. Therefore, Philip Morris denies that it is possible to manufacture commercially acceptable cigarettes through this process. In fact, Philip Morris spent hundreds of millions of dollars developing a "denicotinized" cigarette.

The cigarette, which was test-marketed beginning in 1989, was not acceptable to consumers.

Except as expressly admitted, Philip Morris denies this Request.

REQUEST NO. 64: Admit that you have represented to the public and to the FDA that the nicotine levels in your products are a function of setting the tar levels of such products.

RESPONSE: Philip Morris objects to this Request on the grounds that it is vague and ambiguous. Subject to and without waiving its specific and General Objections, Philip Morris admits that it has stated that its techniques to reduce the "tar" yields of cigarettes also affect nicotine yields, such that a reduction in "tar" yields causes a roughly proportionate decrease in nicotine yield. Except as expressly admitted, Philip Morris denies this Request.

REQUEST NO. 65: Admit that you are able to alter and/or control the nicotine-to-tar ratio in your cigarettes as manufactured.

RESPONSE: Philip Morris objects to the terms "alter" and "control" on the grounds that they are vague and ambiguous. Philip Morris also objects to the phrase "nicotine-to-tar ratio in your cigarettes" on the grounds that it is vague and ambiguous in that it is unclear whether Plaintiff is referring to the FTC nicotine yield or to the nicotine content of cigarette filler. Philip Morris further objects to this Request as argumentative to the extent Plaintiff intends to suggest that Philip Morris "controls" nicotine independently of "tar." Subject to and without waiving its specific and General Objections, Philip Morris refers to and incorporates herein its response to Request No. 59.

REQUEST NO. 66: Admit that, in 2000, Philip Morris first stated publicly its agreement with the "overwhelming medical and scientific consensus that cigarette smoking is addictive."

RESPONSE: Philip Morris objects to the phrase "stated publicly" as used in this Request on the grounds that it is vague and ambiguous. Subject to and without waiving its specific and General Objections, Philip Morris admits that it posted the following statement on its corporate website,